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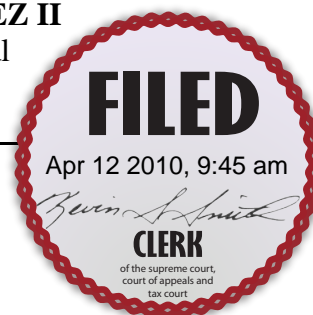
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**IN THE  
COURT OF APPEALS OF INDIANA**

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WILLIAM L. SCHMITT, JR., )

Appellant-Defendant, )

vs. )

No. 88A01-0906-CR-305 )

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE WASHINGTON CIRCUIT COURT  
The Honorable Robert L. Bennett, Judge  
Cause No. 88C01-0003-CF-124

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**April 12, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

William L. Schmitt, Jr. (“Schmitt”), appeals the trial court’s revocation of his probation and its order that he serve the initial suspended sentence of five years and one hundred and nine days.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On March 29, 2000, the State charged Schmitt with five criminal counts, including burglary<sup>1</sup> as a Class B felony. Schmitt pleaded guilty to the burglary count, and the trial court dismissed the remaining charges. Following a May 29, 2008 sentencing hearing, the trial court sentenced Schmitt to six years, of which five years and one hundred and nine days were suspended to probation.<sup>2</sup> Schmitt was ordered to serve the remaining two hundred and fifty-six days executed on an intermittent basis over six years. That is, the trial court ordered that Schmitt “shall serve no less than 14 actual days consecutively, per calendar year, with the entire sentence to be served prior to the termination of probation.” *Appellant’s App.* at 257. Additionally, the trial court ordered Schmitt to pay various costs, fees, and restitution in the amount of \$500.00 to the victims of the burglary. *Id.*

On November 12, 2008, the probation department filed a petition to revoke Schmitt’s probation, alleging that Schmitt had violated his terms of probation by failing to call his probation officer once a week and by failing to pay restitution in a timely manner. On April 9, 2009, the probation department filed an amended petition, which contained the two original allegations as well as allegations that Schmitt had failed to

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<sup>1</sup> See Ind. Code § 35-43-2-1.

<sup>2</sup> The only sentencing order found in the record before us is on green paper and is part of the probation department records. *Appellant’s App.* at 257.

report an address change and had failed to make arrangements to serve the executed portion of his sentence. *Id.* at 120-21.

On May 21, 2009, the trial court held a hearing on the amended petition and heard testimony from the victim, from Schmitt, and from Schmitt's probation officer. Following the hearing, the trial court issued an order finding that Schmitt had violated the terms of his probation by: (1) failing to call his probation officer once a week; (2) failing to report an address change; and (3) failing to make arrangements to serve the executed portion of his sentence.<sup>3</sup> *Id.* at 129-30. The trial court revoked Schmitt's probation and ordered him to serve five years and one hundred and nine days in the Indiana Department of Correction. Schmitt now appeals.

### **DISCUSSION AND DECISION**

Probation is a matter of grace, and the question at a probation revocation hearing is whether the probationer should remain conditionally free. *Gosha v. State*, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007). Probation revocation proceedings are civil in nature, and the State must prove a violation of probation by a preponderance of the evidence. *Thornton v. State*, 792 N.E.2d 94, 96 (Ind. Ct. App. 2003); *see also* Ind. Code § 35-38-2-3(e). We review the trial court's revocation of probation for an abuse of discretion. *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*. An abuse of discretion occurs if the decision is against the logic and effect of the facts and

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<sup>3</sup> Schmitt's failure to pay restitution before August 29, 2008 was not deemed to be a probation violation because the trial court found that Schmitt had a severely injured hand, which prevented him from working and earning a salary. *Appellant's App.* at 130.

circumstances before the court. *Rosa v. State*, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005).

This court will uphold a probation revocation “[i]f there is substantial evidence of probative value to support the trial court’s conclusion that a defendant has violated *any* terms of probation.” *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999) (emphasis added); *Gosha*, 873 N.E.2d at 663. “[P]roof of a single violation of the conditions of probation is sufficient to support the decision to revoke probation.” *Bussberg v. State*, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005), *trans. denied*. This court will neither reweigh the evidence nor judge the credibility of the witnesses. *Washington v. State*, 758 N.E.2d 1014, 1017 (Ind. Ct. App. 2001). Rather, we look to the evidence most favorable to the State. *Id.*

Schmitt agreed to fifteen terms and conditions of probation. *Tr.* at 16. Schmitt’s probation officer, Aaron Loudon (“Louden”), noted one such condition as follows:

[Schmitt] was to report no less than one time each month or more often if directed to do so by the department because he was residing out of state and his case was not being transferred. Uh, I instructed him to report by telephone call one time each week until otherwise directed and that was documented on the terms and conditions of probation that I had him sign on May 30, 2008 . . . .

*Id.* at 5, 9-10.

At the revocation hearing, Loudon testified that Schmitt failed to report weekly as required; reporting only ten times out of the forty-four weeks he was required to report. Probation records revealed that, in 2008, Schmitt checked in by phone on June 2, June 16, June 30, July 28, September 8, September 16, and then not again until November 20. While Schmitt’s contacts between June 2 and September 16 were usually more than a

week apart, the probation department did not file a petition to revoke probation until November 12, 2008—when Schmitt had failed to contact the department for more than eight weeks.<sup>4</sup>

At the revocation hearing, Schmitt made no reference to being unaware of this condition to report weekly. When asked by his own attorney to explain why he had failed to check-in as required, Schmitt stated as follows:

[Louden] said that I've only called in ten times. I don't have a problem in the world of calling in. The only other time that I didn't call in is that [sic] I would call in on a Friday and I did call in a couple of Fridays that I know for a fact because I was scheduled for surgery on Monday morning. When we were here I think I told you that and then one other, a couple other Fridays when I was in rehab o[n] Mondays, I was in rehab all day and I didn't get a chance to call in and I called in on a Tuesday morning.

*Id.* at 40-41. Schmitt did not assert that he was unaware of the reporting requirement; instead, the import of his testimony was that he had in fact called in more often than the department had reported.

The trial court found, in pertinent part:

[P]ursuant to Section II, Paragraph 1 of the terms and conditions of probation, the defendant was required to report to the Washington County Probation Department by telephone on a weekly basis unless otherwise directed. Testimony and records from the probation department indicate that the defendant reported to the probation office approximately ten (10) times out of forty-four (44) occasions for which he was required to report. . . . His failure to report as required constitutes a violation of his probation.

*Appellant's App.* at 129.

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<sup>4</sup> The probation department records reveal that, in his November 20, 2008 contact, Schmitt noted that he had received the revocation paperwork in the mail. The timing of Schmitt's contact suggests that the November 12 petition to revoke probation likely triggered the November 20 contact.

This court will uphold a probation revocation if there is substantial evidence to support a trial court's conclusion that a probationer violated a single condition of probation. *Cox*, 706 N.E.2d at 551; *Gosha*, 873 N.E.2d at 663. Here, Loudon testified that weekly contact was a condition of probation. Schmitt did not contest that weekly reporting was a condition of probation, nor did he assert that he was unaware of this term. Instead, he argued that he in fact had made more contacts than reported by the probation department. The trial court believed Loudon and found that Schmitt had violated his probation.

This court will neither reweigh the evidence nor judge the credibility of the witnesses. *Washington*, 758 N.E.2d at 1017. Finding substantial evidence to support the trial court's conclusion that Schmitt violated at least one condition of his probation, we uphold the trial court's order revoking Schmitt's probation. *Cox*, 706 N.E.2d at 551; *Gosha*, 873 N.E.2d at 663.

Affirmed.

DARDEN, J., and MAY, J., concur.